

ASSEMBLY BILL

No. 454

Introduced by Assembly Member Sharon Runner

February 15, 2005

An act to amend Section 25658 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 454, as introduced, Sharon Runner. Alcoholic beverages: underage drinking.

Under the Alcoholic Beverage Control Act, it is a misdemeanor for any person to provide an alcoholic beverage to a person under the age of 21 years who consumes the beverage and thereby proximately causes great bodily injury or death, as specified.

This bill would also make that act a felony at the discretion of the court. By increasing the penalties for an existing crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25658 of the Business and Professions
- 2 Code is amended to read:

1 25658. (a) Except as otherwise provided in subdivision (c),
2 every person who sells, furnishes, gives, or causes to be sold,
3 furnished, or given away, any alcoholic beverage to any person
4 under the age of 21 years is guilty of a misdemeanor.

5 (b) Any person under the age of 21 years who purchases any
6 alcoholic beverage, or any person under the age of 21 years who
7 consumes any alcoholic beverage in any on-sale premises, is
8 guilty of a misdemeanor.

9 (c) Any person who violates subdivision (a) by purchasing any
10 alcoholic beverage for, or furnishing, giving, or giving away any
11 alcoholic beverage to, a person under the age of 21 years, and the
12 person under the age of 21 years thereafter consumes the alcohol
13 and thereby proximately causes great bodily injury or death to
14 himself, herself, or any other person, is guilty of a misdemeanor
15 *or a felony, at the discretion of the court.*

16 (d) Any on-sale licensee who knowingly permits a person
17 under the age of 21 years to consume any alcoholic beverage in
18 the on-sale premises, whether or not the licensee has knowledge
19 that the person is under the age of 21 years, is guilty of a
20 misdemeanor.

21 (e) (1) Except as otherwise provided in paragraph (2) or (3),
22 any person who violates this section shall be punished by a fine
23 of two hundred fifty dollars (\$250), no part of which shall be
24 suspended, or the person shall be required to perform not less
25 than 24 hours or more than 32 hours of community service
26 during hours when the person is not employed and is not
27 attending school, or a combination of fine and community
28 service as determined by the court. A second or subsequent
29 violation of subdivision (b) shall be punished by a fine of not
30 more than five hundred dollars (\$500), or the person shall be
31 required to perform not less than 36 hours or more than 48 hours
32 of community service during hours when the person is not
33 employed and is not attending school, or a combination of fine
34 and community service as determined by the court. It is the intent
35 of the Legislature that the community service requirements
36 prescribed in this section require service at an alcohol or drug
37 treatment program or facility or at a county coroner's office, if
38 available, in the area where the violation occurred or where the
39 person resides.

1 (2) Except as provided in paragraph (3), any person who
2 violates subdivision (a) by furnishing an alcoholic beverage, or
3 causing an alcoholic beverage to be furnished, to a minor shall be
4 punished by a fine of one thousand dollars (\$1,000), no part of
5 which shall be suspended, and the person shall be required to
6 perform not less than 24 hours of community service during
7 hours when the person is not employed and is not attending
8 school.

9 (3) Any person who violates subdivision (c) shall be punished
10 by imprisonment in a county jail for a minimum term of six
11 months not to exceed one year, by a fine not exceeding one
12 thousand dollars (\$1,000), or by both imprisonment and fine.

13 (f) Persons under the age of 21 years may be used by peace
14 officers in the enforcement of this section to apprehend licensees,
15 or employees or agents of licensees, who sell alcoholic beverages
16 to minors. Notwithstanding subdivision (b), any person under the
17 age of 21 years who purchases or attempts to purchase any
18 alcoholic beverage while under the direction of a peace officer is
19 immune from prosecution for that purchase or attempt to
20 purchase an alcoholic beverage. Guidelines with respect to the
21 use of persons under the age of 21 years as decoys shall be
22 adopted and published by the department in accordance with the
23 rulemaking portion of the Administrative Procedure Act (Chapter
24 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
25 Title 2 of the Government Code). Law enforcement-initiated
26 minor decoy programs in operation prior to the effective date of
27 regulatory guidelines adopted by the department shall be
28 authorized as long as the minor decoy displays to the seller of
29 alcoholic beverages the appearance of a person under the age of
30 21 years. This subdivision shall not be construed to prevent the
31 department from taking disciplinary action against a licensee
32 who sells alcoholic beverages to a minor decoy prior to the
33 department's final adoption of regulatory guidelines. After the
34 completion of every minor decoy program performed under this
35 subdivision, the law enforcement agency using the decoy shall
36 notify licensees within 72 hours of the results of the program.
37 When the use of a minor decoy results in the issuance of a
38 citation, the notification required shall be given within 72 hours
39 of the issuance of the citation. A law enforcement agency may
40 comply with this requirement by leaving a written notice at the

1 licensed premises addressed to the licensee, or by mailing a
2 notice addressed to the licensee.

3 (g) The penalties imposed by this section do not preclude
4 prosecution under any other provision of law, including, but not
5 limited to, Section 272 of the Penal Code.

6 SEC. 2. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the
11 penalty for a crime or infraction, within the meaning of Section
12 17556 of the Government Code, or changes the definition of a
13 crime within the meaning of Section 6 of Article XIII B of the
14 California Constitution.